

IT 98-11

Tax Type: INCOME TAX

Issue: Calculating Interest Payable By The State On A Tax Refund

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,
Petitioner**

v.

**GLT, INC.,
TC CORP.,
FST, INC.,
Taxpayers**

No. 97-IT-0000

**Linda K. Brongel
Administrative Law Judge**

**RECOMMENDATION FOR DISPOSITION REGARDING THE PARTIES'
CROSS-MOTIONS FOR SUMMARY JUDGMENT**

This matter arose after “GLT”, Inc. (“GLT” or “taxpayer”), “TC” Corp. (“TC”), and “FST” Inc. (“FST”) protested a Notice of Denial (“Denial”) that the Illinois Department of Revenue (“Department”) issued to “GLT” regarding tax years ending 12/31/90 and 12/31/91.

Following a period of discovery, each party filed a motion for summary judgment. The dispute here involves the correct method of calculating interest payable by the state on a tax refund. I have reviewed the parties' motions, the exhibits attached thereto, and memoranda filed regarding the motions. I am including as part of this recommendation a summary of the material facts not in dispute. I recommend summary judgment be entered for the Department and taxpayers' motion for summary judgment be denied.

FACTS NOT IN DISPUTE¹:

1. “Widget”, Inc. (“Widget”) is a Delaware corporation with its principal place of business in Rhode Island. (¶1)
2. “Widget” is the corporate parent of “GLT”, “TC”, and “FST”. (¶2)
3. For the 1988 through 1990 tax years, “Widget”, “GLT”, “TC”, and “FST”, filed their Illinois corporate income tax returns on a separate company basis. (¶3)
4. The due date for taxpayers’ Illinois returns, without regard to any extension of time for filing such returns, is March 15. (¶4)
5. On or before the March 15 due date for the returns for the years at issue, taxpayers made quarterly estimated tax payments. The taxes so paid equaled or exceeded the following amounts:

Taxpayer	<u>Taxable Year</u>		
	1988	1989	1990
“GLT”	\$635,262	\$535,991	\$769,851
“TC”	\$104,198	\$181,834	\$ 86,626
“FST”	\$128,633	\$136,904	\$ 73,745

(¶5)

6. “GLT”, “TC”, and “FST” filed their original returns for the years at issue on the following dates:

Taxpayer	<u>Taxable Year</u>		
	1988	1989	1990
“GLT”	10/5/89	10/5/90	10/7/91
“TC”	10/2/89	9/28/90	10/5/91
“FST”	10/5/89	10/6/90	9/28/91

(¶6)

¹ Unless otherwise indicated the following facts are taken from Taxpayers’ Separate Statement of Undisputed Material Facts in Support of Taxpayers’ Motion for Summary Judgment. Paragraph numbers refer to the numbered paragraphs of that document.

7. On audit, the Department determined that taxpayers were unitary and recalculated their tax liability on a combined basis. The recalculation resulted in a decrease in tax liability for “GLT”, “TC” and “FST”. (¶¶7,9)

8. In lieu of filing claims for refund, the taxpayers executed Waivers of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overpayment (IL-870’s). (¶10)

9. Pursuant to the IL-870’s the Department issued the taxpayers refunds for the years at issue in the following amounts:

Taxpayer	<u>Refund</u>			
	1988	1989	1990	
“GLT”	\$592,628	\$535,991	\$750,460	
“TC”	\$100,483	\$181,834	\$ 86,626	
“FST”	\$124,426	\$136,904	\$ 71,395	(¶11)

10. The refund amounts designated above represent tax only. (¶12)

11. The Department calculated interest on the above overpayments from the day after the date on which taxpayers filed their returns (as set forth in paragraph 6). (¶13)

12. On or about January 10, 1996, taxpayers filed amended returns and claims for refund to recover additional interest on the overpayments for the years at issue. (¶14)

13. In their amended returns and claims for refund, the taxpayers used the due dates of their returns, without regard to any extension of time for filing such returns, as the date from which interest began to accrue. (¶15)

14. On February 27, 1997, the Department issued Notices of Denial of the taxpayers’ claims for refund. (¶16)

15. The taxpayers timely protested the Notices of Denial on April 25, 1997. (¶17)

CONCLUSIONS OF LAW:

A motion for summary judgment is appropriate where the pleadings, affidavits, and other documents on file show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c); People ex rel. Department of Revenue v. National Liquors Empire, Inc., 157 Ill. App. 3d 434 (4th Dist. 1987). Summary judgment is also appropriate when the parties agree on the facts, but dispute the correct construction of the applicable statute. Bezan v. Chrysler Motors Corp., 263 Ill. App. 3d 858, 864 (2nd Dist. 1994). In this case, the parties agree that there is no genuine issue of material fact with regards to the amount of taxes paid, when such payments were made, and the dates on which the taxpayers filed returns for the years at issue. The only issue is a legal one, that is, when the running of interest begins on an overpayment. Accordingly, an action for summary judgment is appropriate.

For the years at issue, taxpayers made estimated tax payments on or before the unextended due date of their returns (March 15), which equaled or exceeded their Illinois income tax liability. Taxpayers were entitled to file their returns on an extended basis, that is, on or before October 15. As a result of an audit, whereby the Department found that the taxpayers were members of a unitary group, the Department recalculated taxpayers' tax liability for the years 1988 through 1990 and issued refunds to the taxpayers. The amount of the tax refunded was agreed to by the taxpayers and taxpayers consequently signed Forms IL-870. The refund issued by the Department included interest from the date the tax returns were actually filed, not, as taxpayers claim the interest should have been calculated, from the due date of the return when the full amount of the tax had been paid.

The issue here is strictly one of statutory construction. The statute in effect for the years at issue, Section 909 of the Illinois Income Tax Act (“IITA”), provides:

Interest on overpayment. Under regulations prescribed by the Department, interest shall be allowed and paid at the rate of 9% per annum (or at such adjusted rate as is established under Section 6621(b) of the Internal Revenue Code) upon any overpayment in respect of the tax imposed by this Act, except that if any overpayment of tax imposed by this Act is refunded within 3 months after the last date prescribed for filing the return of such tax or within 3 months after the return was filed, whichever is later, as determined without regard to processing by the Comptroller, no interest shall be allowed on such overpayment. For purposes of this subsection, no amount of tax, for any taxable year, shall be treated as having been paid before the date on which the tax return for such year was due under Section 505, without regard to any extension of time for filing such return. Ill. Rev. Stat. ch. 120, ¶9-909(c) (1991), now 35 ILCS 5/909(c).

Although the statute speaks to “overpayment,” it does not define when the overpayment occurs. Rather, a Department regulation prescribes the date from which interest should be calculated on a refund. Regulation Section 100.9110(c)(3)(A)² states:

The date of overpayment is the date of payment of any tax which thereafter becomes or is determined to be refundable or creditable for the taxable year, except as provided in subsection (B). There can be no overpayment of tax prior to the last day prescribed for filing the tax return, nor until the entire tax liability for the taxable year is satisfied, nor until the return is filed for the taxable year. Therefore, the date or dates of overpayment are the date of payment of the first amount which (when added to previous payments) exceeds the tax liability (including any interest or penalties) for the taxable year and the date or dates of any subsequent payment(s) made with respect to such liability, which in any event cannot be earlier than the last day prescribed for filing the return for the year, nor earlier than the date the return is filed. The “last day prescribed for filing the return” for purposes of this subsection and subsection(d) is the original due date, not the extended due date, if any. (emphasis added)

Therefore, by Departmental regulation, the taxpayer is not entitled to interest prior to the filing of the return.

It is taxpayers’ contention that this regulation impermissibly imposes an additional restriction on the payment of the interest and goes beyond the language of the statute. It is well

settled that the Department's regulations can neither limit nor extend the scope of a statute. *See, e.g., Canteen Corp. v. Dept. of Revenue*, 123 Ill.2d 95 (1988); *Du-Mont Ventilating Co. v. Dept. of Revenue*, 73 Ill.2d 243 (1978).

The regulation here does neither. The statute confers power on the Department to issue regulations which prescribe the payment of interest, and the Department has made the determination that the filing of the return is a necessary condition to overpayment. A regulation of an administrative body will be upheld where it provides a reasonable construction of an ambiguous statute. *Medcat Leasing Co. v. Whitley*, 253 Ill. App. 3d 801 (1993) (court accepted Department's definition of "medical appliance" by regulation as it was not defined by statute).

The Department has made the determination that an overpayment cannot have occurred until it has been placed on notice by the filing of a return. Prior to a taxpayer's filing of a return, the Department cannot conduct an audit, and therefore, cannot be on notice that an overpayment has occurred and interest is payable. The Department's regulation defines the date from which interest is payable as being the later of three events, one of which is the filing of the tax return. This construction is not unreasonable since it is within the taxpayer's control as to when the return is filed and it is the taxpayer that has control of the relevant information. The Department's regulation has not limited the scope of the statute but merely provided a methodology for the payment of interest which is consistent with the legislature's intent.

The taxpayers also argue that the Uniform Penalty and Interest Act ("UPIA")³ should apply rather than Section 909 since the Department used language referring to the UPIA on the Forms IL-870, Waivers of Restrictions on Assessment and Collection of Deficiency in Tax and

² Now Sec. 100.9400(c)(3)(A).

³ 35 ILCS 735/3-1 et seq.

Acceptance of Overpayment.⁴ The IL-870's set forth the amount of the tax refund and were signed by both parties. The fact that the form included language from the UPIA cannot change the effective date of the statute. The legislature enacted the UPIA effective for tax years after January 1, 1994. The mere recitation of language from the UPIA on the Department's form cannot change the law as enacted by the legislature. The years at issue in this case are 1988 through 1990. Therefore, since the tax periods are prior to the effective date of the UPIA, the UPIA cannot apply to the calculation of interest on these refunds,⁵ and the applicable statute is Section 909(c) of the IITA.

In addition, the taxpayers refer to federal law to bolster their argument since Illinois income tax law is based in large part on the federal. According to Section 102 of the IITA:

Except as otherwise expressly provided or clearly appearing from the context, any term used in comparable context in the United States Internal Revenue Code of 1954 or any successor law or laws relating to federal income taxes and other provisions of the statutes of the United States relating to federal Income taxes as such Code, laws and statutes are in effect for the taxable year.

Section 6611(b)(2) of the Internal Revenue Code generally provides that in the case of an overpayment, interest is payable from the date of overpayment. Section 6611(e)(3) limits the

⁴ The IL-870's included the following language:

An executed IL-870 constitutes a notice and demand for purposes of Sections 3-2 and 3-3 of the Uniform Penalty and Interest Act. Therefore, if the amount shown due on the IL-870 is paid within twenty-one (21) days of the date of execution of the waiver, no additional interest will accrue.

⁵ According to the Section 3-9(c) of the UPIA, interest on claims which are filed after the effective date of the Act, January 1, 1994, is to be paid in accordance with the UPIA. Although the taxpayers have filed claims pursuant to 86 Admin. Code ch. I, §100.9400(f)(6) in order to protest the calculation of interest, there has been no claim regarding the underlying tax liability, therefore, §3-9(c) does not apply here. If a return is due before January 1, 1994, penalty and interest calculations will be in accordance with the law in effect at that time, and if a return is due after January 1, 1994, the calculations will be in accordance with the UPIA. Informational Bulletin 93-2 (August 1993).

payment of interest in the case where the IRS has made an adjustment which results in an overpayment,

...interest on such overpayment shall be computed by subtracting 45 days from the number of days interest would otherwise be allowed with respect to such overpayment.

The 45 day time period is the same as the period in which the IRS may pay a refund following the due date of a tax return or the filing of a tax return without incurring a liability to pay interest on the refund. IRC §6611(e)(1).⁶ Even using the federal tax law as a model, then, interest on a refund of an overpayment following an audit would not begin to accrue on the due date of the return.

It is not necessary to look to the federal law, however. The statute and the Department's regulation are clear in their application. By virtue of Reg. Sec. 100.9110(c)(3), taxpayer is only entitled to interest from the date the tax returns were actually filed.

For all of the foregoing reasons, I conclude that as a matter of law, "GLT" is only entitled to interest on its overpayment of tax from the date its returns were actually filed. I recommend that "GLT"'s motion be denied, the Department's motion be granted, and judgment be entered in favor of the Department.

WHEREFORE IT IS ORDERED THAT:

1. Department's motion is hereby granted, and summary judgment is entered for the Department.
2. Taxpayer's motion is denied.
3. The Notice of Denial of the Claims is hereby affirmed and this matter is concluded.

⁶ Illinois likewise exempts the Department from the payment of interest on a refund if the refund is made within 3 months after the return is filed. Ill. Rev. Stat. ch. 120, ¶9-909(c)(1991).

Date:

Linda K. Brongel
Administrative Law Judge